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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JACOB EARL SANTANA,

Defendant and Appellant.

E072692

(Super.Ct.No. RIF152925)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.

Affirmed.

Siri Shetty, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Jacob Earl Santana, filed a petition pursuant to Penal Code section 1170.95,¹ which the court denied. After counsel for defendant filed a notice of appeal, this court appointed counsel to represent defendant.

Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and identifying one potentially arguable issue: whether the trial court erred in denying defendant's petition. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND²

"On the afternoon of October 1, 2009, defendant and his brother-in-law, Urbano Gonzalez, drove to the home of Cesar Saldana to test fire some .380-caliber handguns on the rear portion of Saldana's property. Saldana later told police officers that he saw defendant take two handguns and a box of ammunition out of the back of the car, and stick the two handguns in his waistband." (*People v. Santana* (Apr. 4, 2012, E053875) [nonpub. opn.] p. 2 (*Santana*).)

Luis Aguirre testified at trial that after 8:00 p.m. the same evening, defendant called Aguirre and asked to buy some methamphetamine. Defendant said he did not want to drive out to Aguirre's home, so they met across the street from a store on Fourth Street

¹ All further statutory references are to the Penal Code.

² Our April 4, 2012 opinion in case No. E053875, from defendant's appeal of the original judgment, is part of the record on appeal in this case, the People having attached it to their response to defendant's petition. Nonetheless, defendant requested, and we granted, judicial notice of the opinion. We rely at length on the factual background recited in that opinion.

in Perris. Aguirre's brothers Cesar and Evander went with him in his truck "because it was late." (Santana, *supra*, E053875, at p. 2.)

Defendant did not mention that Gonzalez would be there. Aguirre had not seen Gonzalez in several months because Gonzalez had been out of town. Aguirre knew defendant through Gonzalez, but not very well. Aguirre did not completely trust Gonzalez. (Santana, *supra*, E053875, at p. 2.)

Defendant was waiting at the Fourth Street location outside his car. Aguirre followed defendant to another, more remote location at defendant's request. They drove for 15 to 20 minutes, turned off on a dirt road, and stopped in an open area near some hills and pepper trees. Both defendant and Aguirre got out of their vehicles. Cesar and Evander stayed inside Aguirre's truck. (Santana, *supra*, E053875, at p. 2.)

Gonzalez came out from behind some trees about 55 feet away. Gonzalez took about 90 seconds to walk over to defendant, who was about 15 feet away from Aguirre, and stood next to defendant. Gonzalez had his face covered. Defendant told Aguirre, "come on, come on" Gonzalez started to shoot at Aguirre. Aguirre fell to the ground, rolled, and stood up to run. As he stood up, a bullet hit him in the back. Aguirre leaned up against a fence and looked over at his truck. (Santana, *supra*, E053875, at pp. 2-3.)

Gonzalez shot at Aguirre's brothers who had gotten out of the truck. Cesar fell to the ground; Evander was hiding on the ground behind the truck. Gonzalez came running toward Aguirre as he ran away; Gonzalez shot at Aguirre again, using the last bullet.

Gonzalez attempted to fire the empty gun at least one more time. (*Santana, supra*, E053875, at p. 3.)

At that point, defendant got in his car and tried to run over Aguirre. Defendant then reversed his car and tried a second time. The car hit Aguirre's knee. Aguirre saw Evander run over Gonzalez in Aguirre's truck. Evander put the truck in reverse and ran over Gonzalez a second time. Defendant then drove off the property. All three brothers got into Aguirre's truck and left as well. (*Santana, supra*, E053875, at p. 3.)

The People charged defendant by felony information with conspiracy to commit the murder of Aguirre (count 1; § 182, subd. (a)(1)), attempted murder of Aguirre (count 2; §§ 664/187, subd. (a)), attempted murder of Cesar (count 3; §§ 664/187, subd. (a)); attempted murder of Evander (count 4; §§ 664/187, subd. (a)), assault with a firearm upon Aguirre (count 5; § 245, subd. (a)(2)), assault with a firearm upon Cesar (count 6; § 245, subd. (a)(2)), assault with a firearm upon Evander (count 7; § 245, subd. (a)(2)), and assault with a deadly weapon upon Aguirre (count 8; § 245, subd. (a)(1)). The People also enumerated 32 overt acts defendant had taken toward the murder of Aguirre in the count 1 offense.

On March 29, 2011, a jury found defendant guilty of counts 1 through 7, but not guilty on count 8. The court sentenced defendant to an aggregate term of imprisonment of 25 years to life.

On January 28, 2019, defendant filed a petition for resentencing pursuant to section 1170.95. On April 9, 2019, the People filed opposition to defendant's petition.

On April 12, 2019, the court denied defendant’s petition without prejudice reasoning as follows: “The reason it’s denied without prejudice is the defendant didn’t check any of the boxes that he needs to. He didn’t say he was not the actual shooter. He didn’t say, ‘I did not intend to kill the victim.’ He didn’t say he wasn’t a major participant. And he didn’t say the victim was not a peace officer. So it’s denied without prejudice. He can refile the petition.”

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues. (§ 1170.95 [Relief available only for those convicted of *murder* under the felony murder rule or the doctrine of natural and probable consequences].)

III. DISPOSITION

The judgment is affirmed.

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McKINSTER

J.

We concur:

RAMIREZ

P. J.

MENETREZ

J.